



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Department
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
Chair

JOHN CHIANG
Member

TOM CAMPBELL
Member

August 2005, Franchise Tax Board Litigation Roster

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: <http://www.ftb.ca.gov/law/litrstr/index.html>.

The Litigation Rosters for the last twelve months maybe found on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – August 2005

Case Name

Court Number

None

FRANCHISE AND INCOME TAX
New Cases – August 2005

Case Name

Court Number

Nissan North America, Inc. Los Angeles Superior Court Docket No. BC334313

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

August 2005

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Filed - 05/23/03

Court of Appeal, 2nd Appellate Dist. Div P No. B178750

Taxpayer's Counsel

FTB's Counsel

Holly Kendig, Christopher W. Campbell

Brian Wesley

O'Melveny & Myers, LLP

- Issues:
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
 3. Whether plaintiffs timely filed the suit for refund.

Years: 1992 and 1993

Amount \$4,912,037.26

Status: **Plaintiffs/Appellants' Reply Brief filed August 9, 2005.**

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03425690

Filed - 10/23/03

Taxpayer's Counsel

FTB's Counsel

Roy E. Crawford, Robert J. Waldow

David Lew

Heller, Ehrman, White & McAuliffe, LLP

- Issues:
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
 2. Whether section 24344(b) controls the allocation of interest expense.
 3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
 4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
 5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

Year: 1991

Amount \$2,824,983.00

Status: Hearing on Motion for Attorneys' Fees scheduled for September 1, 2005. **Defendant's Opposition to Plaintiff's Request for Reasonable Litigation Costs, Including Attorneys' Fees filed August 17, 2005.**

CITY NATIONAL CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334772

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas

Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP

Sherrill Johnson

Offices of the General Counsel City National Bank

Filed – 06/10/05

FTB's Counsel

Donald R. Carrier

Joseph M. O'Heron

- Issues:
1. Whether Plaintiff improperly engaged in tax shelter transaction involving Regulated Investment Trusts (REITs) and Regulated Investment Companies (RICs) during the subject years.
 2. Whether certain subsidiaries were exempt from California taxation as IRC 501(c)(15) entities.
 3. Whether Plaintiff has satisfied the requirement of exhausting all administrative remedies in order to maintain a lawsuit.

Years: 1999 through 2003

Amount \$84,676,129.00

Status: Discovery proceeding. **Plaintiff's Opposition to Demurrer to Complaint filed August 10, 2005. Defendant's Reply to Opposition to Demurrer to Complaint filed August 16, 2005. Hearing on Demurrer held on August 23, 2005; Demurrer Sustained with Leave to Amend.**

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

Filed - 02/07/03

FTB's Counsel

Steven J. Green

- Issues:
1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
 2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years: 1974-1982, 1984-1987, 1989-1991

Amount \$2,912,696.00

Status: Order to Stay Proceeding signed by Judge Virga on November 29, 2004, until a decision is reached in the *General Motors v. FTB* case.

DILTS, WALTER B. JR. AND PHYLLIS A. KAPPELER v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC04436496

Taxpayer's Counsel

R. Todd Luoma

Law Office of Richard Todd Luoma

Filed - 11/19/04

FTB's Counsel

Anne Michelle Burr

Issue: Whether Plaintiffs ceased to be California residents as of December 16, 1994.

Years: 1994 & 1995 Amount \$973,101.00

Status: **Notice of Early Settlement Conference filed on August 26, 2005. Mandatory Settlement Conference scheduled for September 30, 2005. Trial scheduled for May 8, 2006.**

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733

Taxpayer's Counsel

Joanne Garvey, & Teresa Maloney

Heller, Ehrman, White & McAuliffe

FTB's Counsel

Benjamin F. Miller

Issue: Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years: 1980 through 1985 Amount \$1,137,006.98

Status: **Oral Argument Calendared for October 18, 2005.**

FREIDBERG, EDWARD & TRACIE E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed - 02/06/02

Court of Appeal, 1st Appellate District, No. A106315

Taxpayer's Counsel

John E. Cassinat & Ronald L. Carello

Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

Issues:

1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years: 1991 through 1994 Amount \$149,696.00

Status: **Opinion Modified on August 4, 2005 (no change in Judgment).**

GALASKI, GREGORY JOHN v. Franchise Tax Board

San Diego Superior Court Docket No. IC833950

Filed – 08/09/04

Taxpayer's Counsel

Gregory Galaski, In Pro Per

FTB's Counsel

Gregory S. Price

Issues:

1. Whether Plaintiff filed claims for refund for each of the years.
2. Assuming claims for refund were filed whether there was an overpayment of tax.

Years: 1999 through 2003

Amount \$13,092.37

Status: Order on Matters Under Submission filed July 21, 2005; Motion for Reconsideration is denied. Trial scheduled for August 5, 2005, vacated.

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05-439929

Filed – 03/29/05

Taxpayer's Counsel

FTB's Counsel

Thomas H. Steele

Marguerite Stricklin

Andres Vallejo, Jeffrey S. Terraciano

Morrison & Foerster LLP

- Issues:
1. Whether the taxpayer's payroll factor was properly computed by excluding foreign employee stock options.
 2. Whether the taxpayer's sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
 3. Whether federal RAR adjustments were properly taken into account.

Years: 1992-1997

Amount \$3,550,367.00

Status: Settlement Conference scheduled for May 26, 2006; Trial scheduled for June 12, 2006.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Filed - 03/06/02

Court of Appeal, 2nd Appellate District No. B165665

California Supreme Court No. S127086

Taxpayer's Counsel

FTB's Counsel

Charles R. Ajalat

Stephen Lew

Law Office of Ajalat, Polley & Ayoub

Donald Currier

Joseph O'Heron

- Issues:
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
 2. Whether interest income was properly characterized as business income.
 3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
 4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
 5. Whether various receipts from intangible assets were properly excluded from the sales factor.
 6. Whether research tax credits were properly limited to the entity incurring the expense.
 7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
 8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
 9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years: 1986 through 1988

Amount \$10,692,755.00

Status: Defendant/Respondent FTB's Letter to California Supreme Court re: the Arizona Supreme Court's denial of review of the *Walgreen Arizona Drug Co. v. Arizona Dept of Revenue* (Ariz. Ct. App. 2004) 97 P.3d 896 decision filed on behalf of the Franchise Tax Board on July 1, 2005.

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

Filed - 11/12/03

FTB's Counsel

Donald Currier

Issue: Whether Plaintiffs were entitled to a business bad debt reduction.

Years: 1990 & 1993

Amount \$65,738.00

Status: Plaintiffs' Objection to Court's decision filed on June 29, 2005.

HEPNER, GERSHON v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334679

Taxpayer's Counsel

Dennis N. Brager, Kneaver Riggall

Law Offices of Dennis N. Brager

Filed – 06/08/05

FTB's Counsel

Herbert A. Levin

Issue:

1. Whether the taxpayer filed a valid claim for refund when there is an unpaid balance on the account.
2. If the taxpayer filed a valid claim for refund, is the amount refundable limited to the amount paid within one year of the date of the claim?
3. Whether the notice of proposed assessment was timely issued.
4. Whether the penalty for fraud was properly imposed.

Years: 1987

Amount \$22,065.00 Tax
\$23,902.00 Penalty

Status: Case Management Conference scheduled for September 26, 2005. **Defendant's Demurrer filed on August 15, 2005.**

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court No. A382999

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison

Hutchison & Steffen, H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

James W. Bradshaw

McDonald, Carano,

Wilson LLP

Las Vegas, Nevada

Issues: 1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years: 1991 and 1992 Amount \$7,545,492.00 Tax
\$5,659,119.00 Penalty

Status: Clark County District Court:
FTB's Response to Hyatt's Motion to Compel Depositions and for Deposition Scheduling Order and Counter Motion for Protective Order, filed August 1, 2005. FTB's Objections to Hyatt's Proposed Discovery Commissioner Report & Recommendation (DCR&R) re: July 8, 2005, Partial Hearing on Hyatt's Motion to Compel filed August 2, 2005. FTB's Supplement to FTB's Motion for Protective Order filed August 3, 2005. Hyatt's Motion to Strike and Opposition to FTB's Supplement to Motion for Protective Order filed August 4, 2005. Hyatt's Motion to Associate Counsel, Joy Fuyuno, Esq., Raymond Marshall, Esq. and Colin C. West, Esq., filed August 10, 2005. Hearing held on August 30, 2005.

IDLEMAN, HURBERT AND JOANN v. Franchise Tax Board

Los Angeles Superior Court Docket No. BS093240

Taxpayer's Counsel

Warren Nemiroff, Esq.

Filed – 10/21/04

FTB's Counsel

Marla K. Markman

Issue: Whether or not the taxpayers are entitled to a refund as a result of federal adjustments to a SubChapter S corporation.

Year: 1995 Amount \$86,458.00

Status: Hearing on Demurrer scheduled for September 1, 2005. **Defendant's Motion to Compel, Points and Authorities filed on August 12, 2005. Plaintiffs' Reply in Support of Opposition to Defendant's Motion to Compel filed on August 22, 2005. Defendant's Reply to Plaintiffs' Reply in Support of Opposition to Defendant's Motion to Compel filed August 25, 2005.**

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC298685

Court of Appeal 2nd Appellate District Court No. B175952

Taxpayer's Counsel

Derek L. Tabone, Esq.

Law Offices of Tabone, APC

Filed – 07/09/03

FTB's Counsel

Brian Wesley

Elisa Wolfe-Donato

Issue: Whether Plaintiffs have taxable income for the years involved.

Years: 1999-2001 Amount \$208,742.00

Status: **Plaintiffs/Appellants' Request for an Extension to File Reply Brief granted to September 16, 2005.**

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Court of Appeal, 1st Appellate District Court No. A107209*Taxpayer's Counsel*

Edwin P. Antolin

Silverstein & Pomerantz, Jordan M. Goodman

Brian L. Browdy, Horwood, Marcus & Berk

FTB's Counsel

George C. Spanos

- Issues:
1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
 2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year: 1987Amount \$133,042.00Status: Oral Hearing scheduled for September 29, 2005.**KIM, PAUL M. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC333465

Filed – 05/13/05

Taxpayer's Counsel

Yoon Han Kim

Law Offices of Yoon Han Kim & Assoc.

FTB's Counsel

Donald R. Currier

- Issue:
1. Whether taxpayer had income from payments received as the result of a lawsuit.
 2. Whether taxpayer had a loss arising from foreclosure of property.
 3. Whether the taxpayer filed a claim for refund.

Years: 1993Amount \$16,098.46

Status: **Defendant's Answer to First Amended Complaint filed August 22, 2005. Case Management Conference held on August 31, 2005; Trial Setting Conference scheduled for October 4, 2005.**

KUHN, DAVID & ELIZABETH v. Franchise Tax Board

Alameda Superior Court Docket No. WG05212795

Filed – 05/13/05

Taxpayer's Counsel

David N. Kuhn

Attorney at Law

FTB's Counsel

David Lew

- Issue:
1. Whether Plaintiffs timely filed claims for refund.
 2. Whether estoppel should lie against the Board for failing to notify Plaintiffs of the statute of limitations.

Years: 1994 through 1996Amount \$18,090.48

Status: **Notice of Demurrer and Demurrer of Franchise Tax Board to Complaint; Memorandum of Points and Authorities in Support Thereon; Appendix of Authorities in Support of Demurrer filed August 11, 2005.**

LAVINE, ELIZABETH v. Franchise Tax Board

Sacramento Superior Court Docket No. 04AS03347

Taxpayer's Counsel

Elizabeth Lavine, In Pro Per

Filed - 09/07/04

FTB's Counsel

Amy J. Winn

Issues: 1. Whether the suit for refund was filed timely.
2. Whether Plaintiff was a resident of California in 1999.

Year: 1999 Amount \$4,579.91

Status: Discovery proceeding.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Court of Appeal, 1st Appellate District Court No. A102915

Taxpayer's Counsel

Edwin P. Antolin

Morrison & Foerster, LLP

Filed - 04/09/01

FTB's Counsel

Joyce Hee

Issues: 1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years: 1993 and 1994 Amount \$2,185,718.00

Status: Unpublished Opinion filed on July 28, 2005; Judgment is affirmed in full in favor of Defendant/Respondent Franchise Tax Board. **Plaintiffs/Appellants' Petition for Review filed with California Supreme Court on August 31, 2005.**

MARKEN, DONALD W. & CLAUDINE H. v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Court of Appeal, 1st Appellate Dis. No. A109715

Taxpayer's Counsel

William E. Taggart, Jr.

Taggart & Hawkins

Filed - 04/05/99

FTB's Counsel

Marguerite Stricklin

Issue: Whether plaintiffs were residents of California in 1993.

Year: 1993 Amount \$244,012.00

Status: **Plaintiffs/Appellants' Notice of Appeal on Motion for Recovery of Litigation Costs filed on August 15, 2005.**

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 03424737

Filed - 09/24/03

Court of Appeal, 1st Appellate Dist. Div. One No. A109907

Taxpayer's Counsel

Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang
Pillsbury Winthrop, LLP

FTB's Counsel

Anne Michelle Burr

Issues: 1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years: 1993 and 1994

Amount \$606,744.00

Status: Plaintiff/Appellant's Brief to be filed September 6, 2005; Defendant/Respondent's Brief to be filed December 5, 2005. **Stipulation Designating Contents of Joint Appendix in Lieu of Clerk's Transcript filed on August 24, 2005.**

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Filed - 10/19/01

Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312

California Supreme Court No. S133343

Taxpayer's Counsel

James P. Kleier, Esq.
Reed Smith LLP

FTB's Counsel

Julian O. Standen

Joseph Patton Powers
Baker & McKenzie

Issues: 1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year: 1991

Amount \$1,879,809.00

Status: **Defendant/Appellant FTB was granted an Extension to file Answer Brief on the Merits to September 12, 2005.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC772282

Filed - 08/27/01

Court of Appeal, 4th Appellate Dist. Division 1, No. D043058 (Covenant Not to Compete)

Court of Appeal, 4th Appellate Dist. Division 1, No. D044362 (Costs/Attorneys' Fees)

Taxpayer's Counsel

Kevin P. Duthoy, Esq.

Bewley, Lasseben & Miller, LLP

Paul D. Draper, Esq.

Law Offices of Paul D. Draper

FTB's Counsel

Stephen Lew

Issue: Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year: 1993

Amount \$227,246.00

Status: **Published Opinion in favor of Plaintiffs/Respondents on (D043058 - Covenant Not to Compete) filed on August 15, 2005. Unpublished Opinion in favor of Plaintiffs/Respondents, Affirmed in part, reversed in part, filed on August 15, 2005 (D044362 – Cost and Attorneys' fees).**

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381

Filed - 08/27/01

Court of Appeal, 4th Appellate Dist. Division 1, No. D043058 (Covenant Not to Compete)

Court of Appeal, 4th Appellate Dist. Division 1, No. D044362 (Costs/Attorneys' Fees)

Taxpayer's Counsel

Kevin P. Duthoy, Esq.

Bewley, Lasseben & Miller, LLP

Paul D. Draper, Esq.

Law Offices of Paul D. Draper

FTB's Counsel

Stephen Lew

Issue: Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year: 1993

Amount \$670,825.00

Status: **Published Opinion in favor of Plaintiffs/Respondents on (D043058 - Covenant Not to Compete) filed on August 15, 2005. Unpublished Opinion in favor of Plaintiffs/Respondents, Affirmed in part, reversed in part, filed on August 15, 2005 (D044362 – Cost and Attorneys' fees).**

MONTGOMERY WARD LLC v. Franchise Tax Board v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Filed - 12/30/02

Taxpayer's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein

Silverstein & Pomerantz, LLP

FTB's Counsel

Gregory Price

Issues: 1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years: 1989 through 1994 Amount \$2,694,192.00

Status: Status Conference held on March 18, 2005, and continued to September 16, 2005.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS05705

Filed - 10/10/03

Taxpayer's Counsel

FTB's Counsel

Spencer T. Malysiak

Michael Cornez

Spencer T. Malysiak Law Corp.

Issues: 1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
2. Whether a declaratory relief action can be brought to prevent the collection of tax.
3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years: 1996 and 1997 Amount \$90,773.05

Status: Discovery proceeding.

NISSAN NORTH AMERICA, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334313

Filed – 06/01/05

Taxpayer's Counsel

FTB's Counsel

Richard J. Ayooob

Stephen Lew

Ajalat, Polley & Ayooob

Lisa Chao

Issues: 1. Whether income from various sources was properly classified as business income.
2. Whether the Franchise Tax Board properly calculated income, expenses and the apportionment factors.
3. Whether the Franchise Tax Board erroneously disallowed credits to which Plaintiff was entitled.
4. Whether proposed assessments were properly made within the statute of limitation.

Years: 1990 & 1991 Amount \$3,250,949.00

Status: Summons and Complaint filed on June 1, 2005, and served on FTB on August 16, 2005.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05-437721

Taxpayer's CounselAmy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz

Filed – 01/15/05

FTB's Counsel

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.

Years: 12/31/97-12/31/01

Amount \$25,067.00 Tax
\$ 3,764.29 Penalty

Status: Trial rescheduled to October 24, 2005.

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax BoardLos Angeles Superior Court Case No. BC278386
Court of Appeal, 2nd Appellate Dist. No. B169465
California Supreme Court No. S127649Taxpayer's CounselClayton Vreeland
Bingham McCutchen LLP

Filed - 07/25/02

FTB's Counsel

Gregory S. Price

Issue: Whether the tax involved was timely assessed.

Year: 1983

Amount \$12,350.00

Status: Defendant/Appellant FTB's Reply Brief on the Merits filed May 20, 2005.

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 316070

Taxpayer's CounselW. Patrick O'Keefe, Jr.
W. Patrick O'Keefe, Jr. Incorporated

Filed – 05/25/04

FTB's Counsel

Anthony F. Sgherzi

Issue: Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Year: 1992

Amount \$45,415.00 Tax

Status: **Plaintiffs' Trial Brief filed August 2, 2005. Defendant's Opposition to Plaintiffs' Motion to Amend Complaint to Raise the Statute of Limitation filed August 3, 2005. Trial held on August 10, 2005. Court Trial Short Cause completed on August 11, 2005.**

SQUARE D COMPANY v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05442465

Taxpayer's Counsel

Allan L. Schare, Kimberly M. Reeder
McDermott Will & Emery LLP
Palo Alto, Ca.

Richard A. Hanson
McDermott Will & Emery LLP
Chicago, IL

Filed – 06/21/05

FTB's Counsel

Paul Gifford

- Issue:
1. Whether Palatine Hills Leasing, which invested in leverage lease transactions, was part of the unitary business conducted by Square D Company.
 2. Whether the income of Palatine Hills Leasing constituted business income of the unitary business conducted by Square D Company.
 3. How the proceeds from the short-term investment of funds should be reflected in the sales factor of the apportionment formula.

Years: 1985 through 1990

Amount \$5,635,087.40

Status: **Plaintiff's Notice of Application of Richard A. Hanson to Appear Pro Hac Vice granted on August 22, 2005.**

**STAPLES, MARK A. v. Taxpayer Advocate Bureau, Franchise Tax Board, and
State Board of Equalization**

Sacramento Superior Court Docket No.04AS03598

Taxpayer's Counsel

Mark A. Staples, In Pro Per

Filed – 09/03/04

FTB's Counsel

Michael J. Cornez

- Issues:
1. Whether the method used by California to compute the tax owed by part-year resident violates various provisions of the United States Constitution.
 2. Whether the department's review and disposition of the plaintiff's objections to additional tax were properly handled.

Year: 1998

Amount \$1,141.00

Status: Trial to be scheduled sometime in December 2005.

TOY'S "R" US, INC. & AFFILIATES v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Court of Appeal, 4th Appellate Court No. C045386Taxpayer's Counsel

Eric J. Coffill
Carley A. Roberts
Morrison & Foerster, LLP

Filed - 07/17/01

FTB's Counsel

Michael J. Cornez

Issue: Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years: 1991 through 1994 Amount \$5,342,122.00

Status: Plaintiffs/Appellants' Reply Brief filed on August 19, 2004.

UNION BANK OF CALIFORNIA v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 05441957

Taxpayer's Counsel

James P. Kleier, Brian Toman, John R. Messenger

Reed Smith, LLP

Filed – 06/06/05

FTB's Counsel

Anne Michelle Burr

Issue:

1. Whether additions to the bad debt reserves of the taxpayer's unitary business were properly calculated.
2. Whether there were losses arising from the exchange of loans for bonds that are deductible as ordinary losses.
3. Whether the water's-edge election fee assessed violated the Commerce Clause of the United State Constitution.

Years: 1991 Amount \$15,953,167.00

Status: Summons and Complaint filed personally on the FTB on June 7, 2005.

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Docket No. 05-440001

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

Filed – 04/01/05

FTB's Counsel

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003 Amount \$29,580.00

Status: **Plaintiff's Case Management Statement filed on August 8, 2005. Defendant's Case Management Statement filed on August 8, 2005. Notice and Time and Place of Trial sent by the court on August 24, 2005; Case Management Conference set for September 2, 2005, trial set for November 7, 2005. Defendant's Notice of Objection to Trial Date filed on August 29, 2005.**

VERTULLO, JOHN & BARBARA v. Franchise Tax Board

San Diego Superior Court Docket No. GIC848577

Taxpayer's Counsel

Denis W. Retoske, Esq.

Filed – 06/07/05

FTB's Counsel

Leslie Branman Smith

Issue: 1. Whether Plaintiffs are entitled to a deduction with respect to funds allegedly embezzled by a business associate during the years at issue.
2. Whether Notices of Proposed Assessment mailed with an incorrect zip code were adequate.
3. Whether Plaintiffs failure to raise the address issue in their appeal of a denial of a Claim for Refund to the Board of Equalization limits their use of that ground in a suit for refund after denial of their appeal.

Years: 1975 & 1978

Amount \$56,155.95

Status: Summons and Complaint filed on June 7, 2005, and served personally on July 8, 2005.

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Filed - 05/22/02

Court of Appeal, 2nd Appellate Dist. No. B178751

Taxpayer's Counsel

FTB's Counsel

Dwayne M. Horii,

Donald R. Currier

William C. Choi

Rodriguez, Horii & Choi

Issues: 1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years: 1986 and 1987

Amount \$1,741,534.00

Status: Plaintiff/Appellant's Opening Brief and Appendix filed June 22, 2005.